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No. 74-204

In the Supreme Court of the United States

OCTOBER TERM, 1975

F. DAVID MATHEWS, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, PETITIONER

v.

GEORGE H. ELDRIDGE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

SUPPLEMENTAL AND REPLY BRIEF FOR THE PETITIONER

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INTRODUCTION AND SUMMARY

In this supplemental and reply brief, we address the jurisdictional question raised by this Court's decision in *Weinberger* v. *Salfi*, No. 74–214, decided June 26, 1975 (subsequent to the filing of our opening brief) and reply to certain arguments put forward by respondent and *amici curiae* in their briefs on the merits.

1. The district court lacked jurisdiction to hear this case. Under this Court's decision in *Salfi*, the federal

district courts are precluded from exercising jurisdiction over an action seeking review of a decision of the Secretary, "save as [jurisdiction is] provided [by Section 205(g) of] the Act" (slip op., p. 6). The latter provision grants jurisdiction only to review a "final decision of the Secretary made after a hearing," and the decision of the Secretary to terminate the payment of respondent's disability payments was not "final." Respondent was entitled to administrative reconsideration of that decision and, if necessary, to a full evidentiary hearing on the factual question of disability, before the Secretary would have rendered a "final" decision. Exhaustion of those procedures might have resulted in reversal of the initial administrative decision and retroactive payment of benefits, which would have fully remedied the injury that respondent alleges he has sustained from the Secretary's initial termination order. Want of jurisdiction in this case does not foreclose later judicial consideration of the constitutional issue respondent seeks to raise here, for a district court could consider that issue upon review of a final decision of the Secretary.

2. In reply to the arguments presented by respondent and *amici* on the merits, we make the following points:

a. The question on the merits is whether the Secretary's existing procedures afford a fair basis for temporarily withholding disability benefits from an individual pending further review of his claim of a continuing disability. The principal objection to those procedures stated by respondent and *amici* is the absence of the opportunity for a personal appearance before the Secretary's delegate. But a disability recipient may appear before the state agency, which must make the initial recommendation of non-disability, and a personal appearance is in any event of only limited utility in view of the fact that a finding of disability must be based upon medically acceptable evidence.

b. The determination of non-disability upon which the Secretary's termination order is based is highly reliable. Most recipients accept that determination as correct, and only 12.2 percent of such determinations are reversed upon reconsideration or after an oral hearing.

c. The temporary termination of disability benefits does not render the recipient's "situation * * * immediately desperate." *Goldberg* v. *Kelly,* 397 U.S. 254, 264.

d. *Amici* seriously underestimate the administrative burdens and financial costs of requiring a full evidentiary hearing prior to an initial determination that disability has ceased.

I

THE DISTRICT COURT LACKED JURISDICTION TO HEAR THIS CASE

We are obliged by this Court's decision in *Weinberger* v. *Salfi,* No. 74–214, decided June 26, 1975, to address a question of jurisdiction that has not previously been discussed.

1. The named plaintiffs in *Salfi,* a widow whose husband died within nine months of the date of their marriage and her daughter by a previous marriage, had filed applications with the Secretary for mother's and child's insurance benefits. The applications were denied both initially and upon reconsideration at the regional level, because the plaintiffs had not met the duration-of-relationship (marriage for nine months) requirement of Section 216 of the Social Security Act, 42 U.S.C. 416. Contending that that requirement denied due process, the plaintiffs then instituted a suit for declaratory and injunctive relief and money damages on behalf of themselves and all others who had been rendered ineligible for benefits as a result of the duration-of-relationship requirement. A three-judge district court granted the requested relief, and the Secretary appealed directly to this Court.

The Court first considered whether the district court had correctly assumed jurisdiction. The second sentence of Section 205(h) of the Act provides that "[n]o findings of fact or decision of the Secretary shall be reviewed by any person, tribunal, or governmental agency except as herein provided." [1] The Court determined that the provision precluded the district court from asserting jurisdiction over the named plaintiffs' complaint, which sought review of the Secretary's decision, at the regional level, denying their application for benefits, "save as [jurisdiction is] provided [by Section 205(g) of] the Act" (slip op., p. 6).

[1] The third sentence of Section 205(h) further provides: No action against the United States, the Secretary, or any officer or employee thereof shall be brought under [Section 1331 *et seq.*] of Title 28 to recover on any claim arising under [Title II of the Social Security Act].

Section 205(g) confers jurisdiction upon the federal district courts to review "any final decision of the Secretary made after a hearing * * *." Although the decision denying the plaintiffs' application for benefits had not been made after a hearing, the Court held that the district court had jurisdiction to hear plaintiffs' suit on their own behalf because (1) "a hearing would be futile and wasteful, once the Secretary has determined that the only issue to be resolved is a matter of constitutional law * * *" (slip op., at p. 15) and (2) the Secretary had determined that the reconsideration decision was "final" within the meaning of Section 205(g).[1A]

2. In this case, respondent had applied for disability insurance benefits under the Social Security Act, and such benefits were awarded effective June 1968. In June 1972, the Secretary initially decided, subject

[1A] The Court further held that the district court had lacked jurisdiction over the claims of the unnamed members of the class (slip op., at p. 12):

> As to class members, * * * the complaint is deficient in that it contains no allegations that they have even filed an application with the Secretary, much less that he has rendered any decision, final or otherwise, review of which is sought. The class thus cannot satisfy the requirements for jurisdiction under 42 U.S.C. § 405(g). Other sources of jurisdiction being foreclosed by § 405(h), the District Court was without jurisdiction over so much of the complaint as concerns the class, and it should have entered an appropriate order of dismissal.

to administrative review, that respondent's disability had ceased and that he therefore was no longer eligible for benefits; the Secretary ordered respondent's benefits terminated effective July 1972. Respondent did not pursue his administrative remedies. Instead, respondent sought immediate judicial review, contending that the termination of his disability insurance benefits had deprived him of property without due process, and requesting, in effect, that the Secretary's order terminating the benefits be vacated, and the benefits reinstated, pending an evidentiary hearing.

Since respondent's action, like that of the named plaintiffs in *Salfi,* seeks review of a decision of the Secretary, it falls within the prohibition of the second sentence of Section 205(h) that "[n]o findings of fact or decision of the Secretary shall be reviewed by any * * * tribunal * * * except as * * * provided [by Section 205(g)].[2] But Section 205(g) did not confer

[2] The appellants in *Norton* v. *Mathews*, No. 74–6212, question of jurisdiction postponed until hearing on the merits, June 30, 1975, contend that, notwithstanding this Court's decision in *Salfi*, the district courts may assert mandamus jurisdiction under 28 U.S.C. 1361 in Social Security cases, reasoning that the *third* sentence of Section 205(h) (see note 1, *supra*) precludes only the exercise of federal-question jurisdiction. We intend to address that issue at greater length in our brief in *Norton*. It is sufficient here to point out that respondent's action, which seeks review of a decision of the Secretary, is governed as well by the *second* sentence of Section 205(h) which precludes such review "except as herein provided," *i.e.*, except as provided by Section 205(g). That sentence plainly bars the district courts from exercising mandamus jurisdiction over actions, such as this one, brought to review a decision of the Secretary.

jurisdiction over respondent's suit. The jurisdictional predicate under that statute is a "final decision * * * made after a hearing," and respondent's very objection to the Secretary's order terminating respondent's disability benefits is that that order was not "made after a hearing."

Moreover, this is not a situation where the jurisdictional requirement of an exhaustion of administrative remedies, including a hearing, should be or has been obviated by the Secretary's determination that the decision was "final." The Secretary's order terminating respondent's disability benefits manifestly was not "final." Respondent was entitled to administrative reconsideration of that decision and, if necessary, to a full evidentiary hearing on the factual question of disability. See generally pp. 14–33 of our opening brief.

Respondent's exhaustion of the available administrative remedies would not have been "futile and wasteful." If the Secretary upon review had found that respondent was in fact entitled to continued payment of disability benefits, he would also have been entitled to retroactive benefits covering the period during which they had been discontinued. See p. 32 of our opening brief. Payment of retroactive benefits would have remedied the injury that respondent would have sustained from the termination and thereby would have eliminated the necessity of judicial consideration of his claim that that termination was wrongful. Thus application to this case of the strict jurisdictional limitations of Section 205(g) fur-

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Accordingly, in such circumstances the constitutional claim would not be mooted by the reinstatement of benefits. See also *Roe* v. *Wade,* 410 U.S. 113, 124–125.[3]

II

RESPONDENT WAS NOT ENTITLED TO A PRE-TERMINATION ORAL HEARING

A. EXISTING PRE-TERMINATION PROCEDURES FURNISH AN ADEQUATE BASIS FOR DETERMINING WHETHER TO WITHHOLD PAYMENT OF BENEFITS PENDING FURTHER ADMINISTRATIVE REVIEW

Respondent and the *amici* (see especially AFL–CIO Br. 9) appear to contend that the Due Process Clause establishes a right not just to fair procedures but to a specific, fixed form of evidentiary hearing prior to even a temporary deprivation of property. But it is clear that the requirements of due process are more flexible than respondent and the *amici* suggest. See, *e.g., Arnett* v. *Kennedy,* 416 U.S. 134, 167–171 (concurring opinion of Mr. Justice Powell). The question, in a case such as this, is not whether there is a "right"

[3] On the other hand, a district court determination sustaining the Secretary's finding of non-disability would moot the constitutional claim. There would be no substantial likelihood of repetition of the alleged injury, for respondent would no longer be an eligible beneficiary subject to possible termination. Nor would respondent be entitled to retroactive benefits for the period from the date of the termination order to the date of the hearing; affirmance of the finding that respondent had recovered from his disability as of the date of termination would deprive him of any rightful claim to disability benefits for the post-termination period. See Section 223(a) of the Act.

to an evidentiary hearing, but whether the existing procedures are fair. As Judge Friendly recently observed in a comprehensive review of the requirements of procedural due process, "if an agency chooses to go further than is constitutionally demanded with respect to one [common element of a fair hearing] * * *, this may afford good reason for diminishing or even eliminating another." Friendly, *"Some Kind of Hearing,"* 123 U. Pa. L. Rev. 1267, 1279 (1975); footnote omitted.

We deal here not with governmental action that finally deprives a person of a property interest to which he claims to be entitled, but only with a preliminary determination that is subject to *de novo* review and revision after a full evidentiary hearing. It is not constitutionally inappropriate to provide less elaborate procedures when only a temporary, rather than a permanent, deprivation of a protected interest is at issue; that distinction underlies, for example, the difference in procedures required for pre-trial detention of a suspect and post-trial incarceration upon conviction. The specific question presented here is whether the procedures now followed by the Secretary provide a sufficiently reliable and fair basis for temporarily withholding disability benefits from an individual pending further review of his claim of a continuing disability.

The Secretary's procedures for initially determining that disability benefits should no longer be paid include the essential elements commonly considered requisite to a "fair hearing." These include an unbiased

tribunal; notice of the action taken and the grounds asserted for it; an opportunity to present reasons why the action should not be taken; the rights to present evidence, to know the evidentiary basis of the adverse decision, and to have the decision based only on the evidence presented; the right to be represented by retained counsel; and the rights to a record of the evidence presented and to a statement of reasons. See Friendly, *supra,* 123 U. Pa. L. Rev. at 1279–1295.

The principal grievance of respondent and *amici* is that the beneficiary is not entitled to appear personally before the person responsible for deciding whether he is still disabled before his benefits are provisionally terminated.[4] This right is necessary, they say, because the issues in disability cases are "too complex to be correctly resolved entirely on paper" (AFL–CIO Br. 10), and because it is essential, for due process, that the decisionmaker "eyeball" the beneficiary and that the latter be able to provide in person "subjective" evidence of pain and suffering (Williams Br. 7–8, 10; AFL–CIO Br. 10–13). This argument, however, is based upon a misconception of the existing procedures. Those procedures do not entail decision of disability claims "entirely on paper" and without regard to subjective evidence. Such evidence can be submitted prior to the initial determination by

[4] *Amicus* AFL–CIO would apparently insist upon the rights to subpoena witnesses and to cross-examine adverse witnesses (Br. 13, n. 5). No one has suggested that the procedures resulting in an initial determination must be open to the public or subject to judicial review.

letter, affidavit, or otherwise, including a personal visit to the state agency responsible for the initial recommendation of non-disability. Moreover, a full evidentiary hearing is available prior to the Secretary's final determination.

In any event, the "subjective" evidence that a personal appearance would principally serve to provide cannot by itself be the basis of a determination of disability. A finding of disability must be supported by "medically acceptable" evidence. Section 223(d)(3) and (5) of the Act.[5] A beneficiary's descriptions of his ailments may have probative value, but since such evidence cannot be dispositive, due process does not require an opportunity for a beneficiary to present it orally prior to a preliminary termination of benefits. Indeed, where there is no medically acceptable evidence of disability before the Secretary, such an oral presentation would serve no purpose whatsoever.

B. EXISTING PRE-TERMINATION PROCEDURES ARE NOT UNRELIABLE

Focussing entirely on the results in the relatively few cases in which a determination that disability has ceased is reviewed in a full evidentiary hearing before an administrative law judge, *amici* contend that the rate of "reversal" is so high (about 55 percent) and such correction comes so late (about one year after termination) that the pre-termination procedures

[5] Those provisions were modified and strengthened in 1968 as a result of congressional concern that courts were relying unduly upon merely "subjective," nonmedical evidence. See H.R. Rep. No. 544, 90th Cong., 1st Sess. 29–31 (1967).

must be deemed constitutionally inadequate (Williams Br. 5–6; AFL–CIO Br. 7–10). Of course, the fact that an initial determination is reversed upon reconsideration or after an evidentiary hearing does not itself show that the initial determination was unreliable. See pp. 43–44 of our opening brief. In any event, *amici* overstate the relevant rate of reversal. They ignore the crucial "overall error rate for all denials of benefits" (*Fusari* v. *Steinberg,* 419 U.S. 379, 383, n. 6), which this Court has said is an important part of a "complete assessment" of a system of procedure. *Ibid.*[6] Indeed, we think that overall error rate, which is only 12.2 percent here,[7] is the best measure of the reliability and fairness of the initial determination process.

Moreover, approximately 75 percent of these "reversals" occurred upon administrative reconsideration

[6] In *Fusari*, the Court also took note of the reversal rate of appealed decisions, as that was apparently the only rate for which information was available. 419 U.S. at 383.

[7] Footnote table follows:

Calendar Year 1973

	Amount	Percent of A.
A. Initial determinations that disability had ceased	33,595	100.
B. Adverse initial determinations accepted without challenge	24,843	73.9.
C. Requests for reconsiderations	8,752	26.1.
D. Reconsiderations favorable to worker	2,967	8.9 (34.1 percent of C.)
E. Reconsiderations unfavorable to worker	5,765	17.2 (65.9 percent of C.).
F. Adverse reconsiderations accepted without challenge	3,887	11.6 (67.4 percent of E.).
G. Requests for evidentiary hearing by ALJ	1,878	5.6 (32.6 percent of E.).
H. ALJ decisions favorable to worker	1,101	3.3 (58.6 percent of G.).
I. ALJ decisions unfavorable to worker	777	2.3 (41.4 percent of G.).
J. Total adverse initial determinations subsequently reversed (D. plus H.)	4,068	12.2 (46.7 percent of C.).

Figures based on HEW's answers to interrogatories in *Green* v. *Weinberger*, No. 2219–73, D.D.C., set forth in part by *amicus* AFL–CIO (AFL–CIO Br. 1a–2a), and in part as an Appendix to this brief (App., *infra*, pp. 21–22).

without a hearing. Since the procedures upon reconsideration are essentially the same as those employed before termination (see pp. 30 and 9A–11A of our opening brief), the "reversals" upon reconsideration do not imply that post-termination procedures are inadequate; such reversals normally reflect merely the consideration of additional documentary evidence submitted by the beneficiary.

C. RESPONDENT AND *AMICI* OVERSTATE THE RECIPIENTS' INTEREST IN AVOIDING TEMPORARY WITHHOLDING OF DISABILITY BENEFITS

We recognize that, for many recipients, Social Security disability benefits are an important source of financial support. But that fact standing alone does not establish a constitutional right to a full-blown evidentiary hearing prior to a temporary withdrawal of such benefits. See *Arnett* v. *Kennedy, supra* (sustaining the temporary removal of a federal employee without a prior hearing). Moreover, it is inaccurate to suggest, as respondent does (Resp. Br. 9), that these termination cases involve "a worker who suddenly finds himself unable to work and unable to support himself or dependents." Since disability benefits are not based upon need, recipients, or their families, may well have assets or other sources of income; they also will typically have (as a result of the time required for investigation and the two-month grace period) several months forewarning of the possible termination of benefits before it actually occurs, during which

period measures may be taken to offset the temporary loss of benefits pending further administrative review.[8] For example, a person might seek limited temporary or part-time employment, notwithstanding that he claims to be still "disabled' (see pp. 18, n. 15 and 25 of our opening brief).

Although this Court has indicated that the possibility of receiving welfare benefits must be taken into account (see p. 38 of our opening brief), respondent dismisses welfare as being "unacceptable" (Resp. Br. 9). He also suggests, joined by *amici* (Resp. Br. 9–10; see Williams Br. 3, n. 1; AFL–CIO Br. 17), that a terminated disability recipient may be ineligible for welfare. *Amici* apparently assume that the only available welfare program would be the federal SSI program. But state and local programs may also be available. Moreover, as we have shown (see pp. 22–23 and 38, n. 39 of our opening brief), termination of Social Security disability benefits prior to an evidentiary hearing does not mean that SSI benefits will also be terminated before such a hearing has been held. Furthermore, welfare is only one of several possible sources of interim income that may be available to a person claiming to be still disabled (see pp. 18, 38 of our opening brief).

[8] We note that respondent, who professed to be able to "get by" without disability benefits (A. 13–14), waited six months after his benefits terminated before seeking a preliminary injunction reinstating the payment of benefits (A. 14–15).

D. *AMICI* MISAPPREHEND THE ADMINISTRATIVE BURDEN AN FINANCIAL COSTS OF REQUIRING A FULL EVIDENTIARY HEARING PRIOR TO AN INITIAL DETERMINATION THAT DISABILITY HAS CEASED

Amici err in contending that the Secretary's assessments of the likely costs and administrative burdens of requiring a full evidentiary hearing before an initial determination to terminate disability benefits may be made and effectuated are overstated (Williams Br. 10–13; AFL–CIO Br. 18–23). Their argument is that current procedures need be changed only by continuing the payment of benefits until the recipient acquiesces in the finding of non-disability or exhausts his administrative remedies, including an oral hearing (Williams Br. 5 n. 3, 11; AFL–CIO Br. 21) and that the increased costs that that change would entail could be minimized by " 'developing procedures for prompt pre-determination hearings and by skillful use of personnel and facilities' " (Williams Br. 12).

But substantial additional costs would be entailed if payment of benefits were continued during the several-month period needed to enable all recipients to request, and those requesting it to receive, reconsideration of the initial determination that disability has ceased (see pp. 64A–65A of our opening brief). *Amici* are unrealistic to suggest that pre-termination evidentiary hearings could be provided within a month or two of the initial determination of non-disability (Williams Br. 12; AFL–CIO Br. 22). Even on their

premise that the number of pre-termination evidentiary hearings were to remain the same as the present number of post-termination hearings (about 1,900), that suggestion blinks reality. The existing administrative structure is already being pressed to its limit in coping with an enormous backlog of requests for evidentiary hearings (see pp. 49–54 of our opening brief), and it presently takes nearly a year before such hearings can be held. The Secretary's efforts to reduce the backlog of hearing requests [9] would be nullified if the number of requests for evidentiary hearings in disability cases were to increase from the present 1,900 to 11,000, the number anticipated if pre-termination evidentiary hearings are to be required.[10] The administrative problems would, moreover, be rendered unmanageable, and the costs enormous, if the requirement of a prior evidentiary hearing were to be

[9] We are advised by HEW that it has recently hired and trained 43 new administrative law judges and has authorized the hiring of supplementary legal and clerical assistance for its staff of administrative law judges.

[10] That estimate was based upon the realistic assumption that the percentage of recipients who contest the initial determination of non-disability would not fall below the present rate of 25 percent. We see no basis for *amicus* AFL–CIO's assumption (AFL–CIO Br. 21) that that rate would fall to only 6 percent. Indeed, it can be anticipated that the rate would in fact increase, for even recipients who might otherwise be inclined to accept the finding of non-disability would have an incentive, not currently present, of prolonging administrative consideration as a means of prolonging the receipt of benefits.

extended to other actions taken by the Secretary, as some lower courts have done.[11]

Amici apparently believe that a concern over the costs of implementing a requirement of pre-termination oral hearings is not entitled to weight (Williams Br. 10; AFL–CIO Br. 19). But such concerns should not be so blithely disregarded. Increases in the already-swollen administrative costs of the disability program [12] will consume limited funds and resources that therefore cannot be used to pay benefits. As Judge Friendly has aptly observed (Friendly, *supra,* 123 U. Pa. L. Rev. at 1276):

> It should be realized that procedural requirements entail the expenditure of limited resources, that at some point the benefit to individuals from an additional safeguard is substantially outweighed by the cost of providing such protection, and that the expense of pro-

[11] See, *e.g.*, *Mattern* v. *Weinberger*, C.A. 3, No. 74–1776, decided June 3, 1975, holding that due process requires a full evidentiary hearing before the Secretary may temporarily reduce benefit payments to recoup past overpayments. But see *Frost* v. *Weinberger*, 515 F.2d 57 (C.A. 2), petition for a writ of certiorari pending *sub nom. Frost* v. *Mathews*, No. 75–5220. See generally Friendly, *supra*, 123 U. Pa. L. Rev. at 1300, n. 168. The Solicitor General has authorized the filing of a petition for a writ of certiorari in *Mattern*.

[12] In fiscal 1974 administrative costs of the disability program were $338.2 million to serve 3.76 million beneficiaries (about $90 per beneficiary), while for the far larger retirement and survivors program, serving 27.8 million beneficiaries, administrative costs were only $583.7 million (about $21 per beneficiary). Social Security Administration, *The Year in Review* 13, 21 (1975).

tecting those likely to be found undeserving will probably come out of the pockets of the deserving. [Footnote omitted.]

CONCLUSION

The judgment of the court of appeals should be vacated and the case remanded with instructions to dismiss. In the alternative, that judgment should be reversed.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.
KEITH A. JONES,
Deputy Solicitor General.

OCTOBER 1975.

APPENDIX

In the United States District Court for the District of Columbia

Civil Action No. 2219–73

RUFUS GREEN, BILLY JOE LAMBERT, PATSIE LAMBERT, RONDA LAMBERT, LEITHA LAMBERT, JEANETTE LAMBERT, AND MARY ANN LAMBERT, THROUGH THEIR FATHER AND NEXT FRIEND, BILLY JOE LAMBERT, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, PLAINTIFFS

vs.

CASPAR W. WEINBERGER, INDIVIDUALLY AND IN HIS CAPACITY AS SECRETARY OF THE UNITED STATES DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, THE UNITED STATES OF AMERICA, DEFENDANT

Defendant's Answers to Plaintiff's First Interrogatories

In accordance with the provisions of Rule 33 of the Federal Rules of Civil Procedure, I, Samuel E. Crouch, Acting Director of the Bureau of Disability Insurance, being duly sworn, answer, to the best of my knowledge, information, and belief, the plaintiff's interrogatories as follows:

* * * * *

14. Please state the number of times that payment of social security disability benefits were terminated pursuant to an "initial determination" (as defined in 20 C.F.R. § 404.905) that disability had ceased:

(a) For the calendar year 1969—41,895

(b) For the calendar year 1970—48,918
(c) For the calendar year 1971—37,585
(d) For the calendar year 1972—36,589
(e) For the calendar year 1973—33,595

* * * * *

16. Please state the number of times that after benefits were terminated pursuant to an "initial determination" (as defined in 20 C.F.R. § 404.905) that disability had ceased the recipient involved requested and received reconsideration of the determination:

(a) For the calendar year 1969—9,454
(b) For the calendar year 1970—10,298
(c) For the calendar year 1971—11,247
(d) For the calendar year 1972—11,184
(e) For the calendar year 1973—8,752

17. Please state the number of times and percentage of occurrence when benefits were terminated pursuant to an "initial determination" (as defined in 20 C.F.R. § 404.905) that disability had ceased that upon reconsideration those benefits were reinstated:

(a) For the calendar year 1969—3,213—34.0%
(b) For the calendar year 1970—4,378—42.5%
(c) For the calendar year 1971—4,305—38.3%
(d) For the calendar year 1972—3,494—31.2%
(e) For the calendar year 1973—2,987—34.1%

* * * * *

U.S. GOVERNMENT PRINTING OFFICE: 1978